IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.1117 OF 2004

Ahsanul Haque Borodgar ... Appellant

V/s.

Bombay Municipal Corporation ... Respondent

Mr.R.A. Thorat for Appellant
Mr.J. Xavier for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 22, 2004**

P.C.:

. This Appeal from Order has been filed against the dismissal of the Notice of Motion by the trial Court. A notice under section 351 of the Mumbai Municipal Corporation Act was issued to the tenant of the appellant in respect of the unauthorised construction. The appellant has filed a suit contending that although he was the landlord of the premises, the notice has been issued in the name of the tenant. It is submitted on behalf of the appellant that the trial Court has disposed off the Motion without there being any reply of the Respondent-Corporation on record and the trial Court has perused the action papers without the appellant being given any inspection of the same.

2. The grievance made by the appellant seems to be genuine. Hence, in my view, the following order would meet the ends of justice:

O R D E R

i) The impugned order is set aside.

ii) The Respondent-Corporation will file its reply within four weeks from today. Rejoinder, if any, to be filed within two weeks thereafter.

iii) The trial Court shall dispose of the Motion within eight weeks thereafter.

iv) The Corporation will not act upon the notice issued under section 351 of the MMC Act during this period.

3. Mr.Thorat, learned Counsel appearing for the appellant, makes a statement on instructions that the Appellant will not agitate the issue of not having been issued the notice under section 351 of the Mumbai Municipal Corporation Act either in the Notice of Motion or in the Plaint.

4. Appeal from Order is disposed of accordingly.

5. In view of the Appeal from Order being disposed of, nothing survives in Civil Application No.1594 of 2004 and the same is disposed of accordingly.